

December 13, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

700 Central Building
810 Third Avenue
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON APPEAL OF NOTICE AND ORDER.

SUBJECT: Department of Development and Environmental Services
Code Enforcement Section File No. E9600902

ESTATE OF CARMEN OLSON
(Chuck Olson and Carole Petersen, Co-Executors)
Code Enforcement Appeal

Violation
Location: 4146 East Lake Sammamish Parkway Southeast

Owner/ Estate of Carmen Olson,
Appellant: Chuck Olson and Carole Petersen, Co-Executors

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary: Deny the Appeal
Division's Final: Deny the Appeal
Examiner: Deny the Appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner: October 30, 1996
Statement of appeal received by Examiner: October 30, 1996

EXAMINER PROCEEDINGS:

Hearing Opened: December 9, 1996
Hearing Closed: December 9, 1996

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Clearing and grading within a sensitive area without permit;
- Clearing and grading without a permit

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On October 9, 1996, the Department of Development and Environmental Services, Code Enforcement Section (the "Department") issued a Notice and Order to the above-indicated

parties, directing them to submit an application for a grading and clearing permit for the restoration of a "sensitive area" as regulated by KCC 21A.24. In addition to citing the above-indicated Appellants for unauthorized work within a regulated "sensitive area" or required buffer, the Notice and Order also cited the Appellants for clearing or grading without having first obtained a clearing and grading permit, as required by KCC 16.82.060 and -.130. Exhibit 2. Approximately 100 cubic yards of earth was moved from a stream/ditch channel. Testimony, Chow and Hansen.

2. The Notice and Order additionally cited unauthorized clearing and/or grading within a floodplain and within an eagle habitat. The Department has withdrawn its position on those two issues. Testimony, Reed. This, however, does not remove consideration of these concerns from any future permit application.
3. On October 22, 1996, Appellants Olson and Petersen filed timely appeal on behalf of the Estate of Carmen C. Olson. The Appellants argue that a) the drainage course excavation was necessary to avert future flooding which had already caused approximately \$8,400 damage in November, 1995; b) that someone in the County said that a permit was not required because it was "an emergency"; that the work conducted was normal and routine maintenance, which is exempted by KCC 21A.24.050.b.3.
4. Regarding the appeal, the following findings are relevant:
 - A. KCC 21A.24.050.B.3 exempts normal and routine maintenance of existing irrigation ditches not used by salmonids as an "agricultural" activity. Although the Appellants hope to establish a tree farm on the property at some future time, the hearing record shows no evidence of recent or continuous agricultural use of the property.
 - B. The excavation work at issue was conducted during August, 1996, approximately 10 months following a 1995 November flood of the residence on the subject property. The work was postponed by the Appellant until summer in order to take advantage of the improved accessibility to the mucky soils during the dry season. Testimony, Olson. The relevant Code provision, contained in KCC 21A.24.050.A, exempts the following:

Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the Department immediately. The Director shall confirm that an emergency exists and determine what, if any, mitigation shall be required to protect the health, safety, welfare and environment and to repair any resource damage.
 - C. The work at issue, the excavation of a ditch with nearside spoils dumping, occurred within a wetland. The soils types, the hydrology and vegetation types confirm the wetland character of the property. Testimony, Hansen. See also Exhibit No. 6. Although the area in question receives water from an artesian spring, the amounts of water have increased significantly since completion of the nearby (upstream) Eagle Ridge development (approved as "Alexander's Farm" in 1986). Testimony, Olson and Petersen.
5. The Appellants ask for more time, in order to integrate any restoration work that may be required with the ditch (stream?) relocation in order to accommodate future development of the property as a Christmas tree farm. This requested enforcement delay could require a year or more, a delay

¹ Webster's New World Dictionary of the American Language, Second Concise Edition (New York: Collins World, 1975): Likely to happen soon; said of danger, evil, etc.

which is unsatisfactory to the Department. The Department concedes that work could be delayed until summer, 1996 (probably necessary due to wet conditions), but argues that a longer delay would be unreasonable and contrary to the public interest. The Department indicates that the permit process, at worst, would require no more than 120 days, provided that all required information is submitted timely by the Applicant. In the near term, the Department asks for stabilization measures to reduce the potential for excessive erosion of the excavation or dredging spoils and erosion of the ditch banks.

6. Although the water course or drainage course at issue in this review is regularly referred to in these findings and in the hearing record as a "ditch," I do not disregard the possibility that it may be considered a "stream" due to the fact that it emanates in substantial part from an artesian spring. However, that definitional question is deferred to the Department or other appropriate agency.

CONCLUSION:

1. Regarding the issues of "eagle nesting area" and "floodplain" the appeal should be dismissed because the Department's pending action is withdrawn.
2. Regarding the remaining issues ("grading and clearing without a valid grading permit"; "grading and clearing within a wetland without a valid permit") the appeal should be denied for the reasons indicated in Finding Nos. 4 and 5, above. According to adopted wetland identification and delineation criteria (soils, hydrology, and vegetation), the work has obviously occurred in a wetland. The record is clear that it occurred in August, at which time no flooding was imminent. Emergency procedures were not employed, in any event. Approximately 100 cubic yards of wetland muck were removed from the channel and deposited nearby. Neither short term nor long term remediation or restoration has occurred.
3. Considering the winter months ahead, immediate sedimentation control measures are essential. The absence of significant current erosive activity cannot be regarded as a basis for ignoring the potential for these exposed mucky soils to be eroded during peak winter storm events.

DECISION:

1. Regarding the issues of eagle nesting and floodplains, the appeal is **DISMISSED**, on the basis that the Department's prosecution of those two issues is **WITHDRAWN**.
2. The appeal from the Department's October 9, 1996, Notice and Order, regarding unauthorized and unpermitted excavation/dredging and spoils deposition (grading and clearing), is **DENIED**.

ORDER:

- A. Not later than 4:00 P.M., December 31, 1996, the Appellants shall spread mulching in a manner as directed by the Department (Site Development Services Section) upon the banks and deposited spoils; AND, IN ADDITION, shall take any other erosion and sedimentation controls required by the Site Development Services Section. The Appellants shall seek appropriate erosion and sedimentation control instructions from the Department within 48 hours after having received this Order.
- B. Not later than March 20, 1997, the Appellants shall make application for a grading permit. The permit may address restoration and/or relocation. However, the Appellants shall not file such application until they have participated in a pre-application conference with Department representatives having expertise and/or jurisdiction in the areas of a) site development, b) wetlands and, c) drainage, as well as any other application review personnel the Department deems appropriate.
- C. Failure to comply with either Paragraphs A or B of this Order, preceding, shall constitute a failure to comply with the Department's October 9, 1996, Notice and Order and all enforcement and prosecutorial remedies described in that Order shall be immediately instated. Civil penalties shall accrue from the date of any deadline indicated in paragraph A and B, above, as appropriate.

ORDERED this 13th day of December, 1996.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 13th day of December, 1996, by certified mail to the following parties and interested persons:

Estate of Carmen C. Olson
Charles W. Olson
20 Mr. Olympus Dr. S.W.
Issaquah, WA 98027

Estate of Carmen C. Olson
Carole E. Petersen
4146 E.Lk.Samm.Pkwy. SE
Issaquah, WA 98029

Ken Dinsmore, DDES/BSD, Code Enforcement Section
Lamar Reed, DDES/BSD, Code Enforcement Section
Jon Hansen, DDES/Site Development Services
Gloria Chow, DDES/Site Development Services

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one days of issuance of the decision.

MINUTES OF THE DECEMBER 9, 1996, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES, CODE ENFORCEMENT SECTION FILE
NO. E9600902 - ESTATE OF CARMEN OLSON

R. S. Titus was the Hearing Examiner in this matter. Participating at the hearing were Jon Hansen, Lamar Reed, Gloria Chow, Chuck Olson, and Carole Petersen.

The following exhibits were offered and entered into the hearing record:

Exhibit No. 1	Staff report to Hearing Examiner
Exhibit No. 2	Copy of Notice and Order issued October 9, 1996
Exhibit No. 3	Copy of Appeal, with exhibits, received October 22, 1996
Exhibit No. 4	Copy of a portion of Kroll map 555 East
Exhibit No. 5	Copy of Situs Property information
Exhibit No. 6	Photographs of site submitted by staff
Exhibit No. 7	Map of the plat of Eagle Ridge, submitted by Olsons
Exhibit No. 8	Color copy of photograph identified as Exhibit No. 3.D

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